No. 75-120

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

FINIS P. ERNEST, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the price-fixing conspiracy of which it was convicted did not sufficiently affect interstate commerce to constitute a violation of Section 1 of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1.

Petitioner and a co-defendant, Modern Asphalt Paving and Construction Co. (Modern), were found guilty by a jury on a one-count indictment alleging a combination and conspiracy to submit collusive bids to the City of East St. Louis, Illinois, for the construction of a sanitary sewer project. The court fined Modern $15,000 and petitioner $35,000. The court of appeals affirmed (Pet. App. A-1 to A-13).

The judgment of the court of appeals was entered on January 29, 1975. A petition for rehearing was denied on February 25, 1975. Petitioner's petition for a writ of certiorari was filed on July 10, 1975, and is therefore out of time under Rule 22(2) of the Rules of this Court.

Modern filed a timely petition for a writ of certiorari on March 27, 1975, which is presently before the Court. *Modern Asphalt Paving and Construction Co.* v. *United States*, No. 74-1219. Petitioner's contention that the price-fixing conspiracy of which it was convicted did not sufficiently affect interstate commerce to constitute a violation of Section 1 of the Sherman Act has been answered fully in our memorandum in opposition in that case, to which we respectfully refer the Court.[1]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1975.

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[1]We are furnishing a copy of that memorandum to the petitioner here.